

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:05CV401-FDW-DCK**

**AURA LABRO KARAGIANNOPoulos,)
Plaintiff,)
v.) **ORDER**
CITY OF LOWELL,)
Defendant.)**

THIS MATTER IS BEFORE THE COURT on the “Plaintiff’s Motion to Recuse Mediator Robert W. Kirby and To Appoint A Judicial Mediator” (Document No. 57) filed March 28, 2008, by the *pro se* Plaintiff; the “Defendant’s Response to Plaintiff’s Motion to Recuse” (Document No. 58) filed March 28, 2008, by the Defendant City of Lowell; and the “Plaintiff’s Response to Defendant’s Response to Plaintiff’s Motion to Recuse” (Document No. 60) filed by the *pro se* Plaintiff on March 31, 2008. After careful consideration of this matter, the Court will deny Plaintiff’s Motion.

Pursuant to a recent telephone status conference with the Plaintiff, Ms. Karagiannopoulos, and Ms. Martha Thompson, counsel for the Defendant City of Lowell, the Court appointed retired Superior Court Judge Robert W. Kirby as the mediator in this case. This selection was in part due to the Plaintiff’s stated preference during the conference for a retired judge over a practicing attorney as mediator. Judge Kirby is a highly regarded retired state judge with an excellent reputation as a mediator. The Court is informed that Judge Kirby has set the mediation in this case for April 9, 2008 at 10:00 a.m. in the 4th Floor Conference Room of the Superior Court for Gaston County. As Judge Kirby stated in his letter to Ms. Karagiannopoulos, which is attached to the Defendant’s response

to this motion, "the purpose of mediation is to determine at an early stage of the trial process if a reasonable resolution can be found which resolves the basic issue in controversy." Both parties are directed to appear at the time and place announced by Judge Kirby for the mediation and to do so with an open mind as to a possible mutually acceptable resolution of this case.

After considering the matter, the Court sees no grounds to recuse Judge Kirby as the mediator or to substitute a judicial settlement conference for the scheduled mediation. It appears to the undersigned that the *pro se* Plaintiff took offense – reasonably or not – at the appearance that the mediator unilaterally contacted counsel for the Defendant. The Court concludes that the slight felt by the *pro se* Plaintiff was not intentional, but was merely an attempt by the mediator to start the routine process of scheduling the mediation. Both parties and the mediator are respectfully encouraged, particularly in light of the Plaintiff's *pro se* status, to avoid this appearance in any future dealings.

IT IS THEREFORE ORDERED that the "Plaintiff's Motion to Recuse Mediator Robert W. Kirby and To Appoint A Judicial Mediator" is hereby **DENIED**.

IT IS FURTHER ORDERED that the parties appear as directed by Judge Kirby on **April 9, 2008 at 10:00 a.m.** at the Superior Court for Gaston County for a mediation in this case.

Signed: March 31, 2008



David C. Keesler
United States Magistrate Judge
